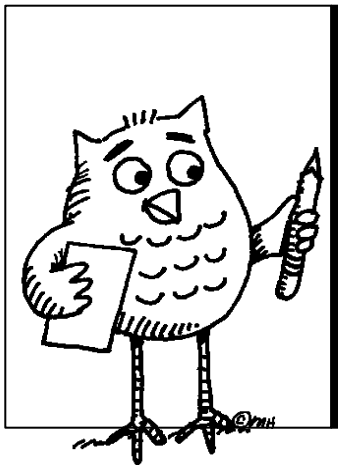

Waiver Wise

Technical Assistance for the Community Options Program Waiver COP-W

Wisconsin Department of Health & Family Services • Division of Disability and Elder Services
Bureau of Aging & Long Term Care Resources

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LUMP SUM PAYMENTS AND MEDICAID WAIVER PARTICIPANTS

I. Waiver Applicants and Participants - Reporting Requirements

At application or at annual review, individuals applying for or already receiving Medicaid waivers, and/or persons acting on their behalf, should be informed that:

- Changes in income and assets may affect waiver financial eligibility and/or cost-share liability or spenddown, and
- Waiver participants have an obligation to report these changes to the county Economic Support Specialists (ESS) in a "timely" fashion. Timely means within ten days from the date the change occurred. If the waiver participant reports the changes to the county care manager, the care manager needs to communicate the changes to ESS.

The waiver participant's obligation to make a timely report is met once the change is communicated to either the care manager or the ESS. These two professionals must then collaborate and keep one another informed to attain an appropriate outcome for the participant.

This technical assistance document explains:

- The effects of lump sums payments on Medicaid waiver eligibility
- The importance of partnering between care managers and economic support specialists
- Potential overpayment and recovery issues

II. Lump Sums in General

One of the most common changes in assets for waiver participants is due to lump sum payments. Lump sum payments can derive from a variety of sources (e.g., insurance settlements, back-payments from Social Security for retroactive social security benefits, inheritances, gifts, gambling/lottery, retroactive workman's compensation payments, etc.). All changes in assets – regardless of source or amount - fall under reporting

requirements. Lump sum payments that are not reported timely may cause an overpayment of Medicaid and waiver services. The overpayment *may be* subject to recovery.

III. Effects of Lump Sum Payments on Medicaid and Waiver Financial Eligibility

How the receipt of a lump sum payment will affect Medicaid and waiver financial eligibility depends on a number of factors, including: the amount, the source of payment, the date the report is made, CARES adverse action logic (explained below), the length of time the sum remains unspent, etc.

While all lump sum payments should be reported timely, certain lump sum payments do not affect Medicaid and waiver financial eligibility. For example, payments that do not cause the waiver participant to exceed the $2,000 countable asset limit will not affect eligibility. Similarly, waiver participants have up to six months from the date of receipt to spend retroactive Social Security payments. Any portion of a retroactive Social Security lump sum payment that remains unspent after six months will be counted as an available asset.

Most other lump sum payments that put the participant's countable assets over the $2,000 limit will affect Medicaid and waiver financial eligibility when they are not spent within appropriate time limits. As long as participants do not divest, they are free to spend lump sums as they see fit. Some waiver participants may decide to retain excess assets, resulting in a loss of waiver eligibility and may choose to pay for their own services for a time. When they become eligible again, county policies will determine when they will be served under waivers.

Untimely reports – or reports made after the ten-day requirement - may cause overpayments of Medicaid card services and waiver services that may be subject to recovery as discussed in Section IX below.

IV. How Waiver Participants Can Spend Lump Sums

ESS and care managers should discuss available options for spending excess assets with waiver participants. Some examples include: the purchase of exempt burial resources, home repairs to the participant's home, furnishings for the waiver participant's home or apartment, a more dependable car, etc.

Waiver participants also have the choice of making **voluntary** repayments to the county for the cost of waiver services received, thereby reducing their estate recovery liability while ensuring continued participation in the program. These voluntary repayments should be entered on the Human Services Reporting System (HSRS) under Standard Program Category (SPC) code 095-02 (refunds/voluntary contributions).

Large lump sum payments that cannot be spent within appropriate time limits may result in Medicaid and waiver ineligibility and in waiver participants paying for long term care services on their own until they are waiver eligible again. See Sections VII and VIII – Excess Assets Spent Before and After CARES adverse action logic for a discussion of appropriate time limits.

Divestment rules apply when lump sums are gifted and divestment penalty periods may result.

V. Timely Reports and Partnering Roles of ESS and Care Managers

Once a lump sum is received and reported, the ESS determines if and how Medicaid and waiver financial eligibility will be affected[1].

- When the receipt of a lump sum is reported to the care manager first, it is the care manager's obligation to immediately inform the ESS.

- When receipt of a lump sum is reported to the ESS first, and the lump sum affects Medicaid eligibility, ESS should inform the care manager as soon as possible.

- When the ESS receives information of a lump sum receipt, ESS enters the information in CARES. If the lump sum affects Medicaid eligibility, the ESS determines the *Medicaid effective closure date.* The *Medicaid effective closure date* is controlled by CARES *adverse action logic,* explained in Section VI below. CARES stands for: Client Assistance for Re-employment and Economic Support and it is a computer program used by ESS to determine eligibility for various assistance programs.

- When eligibility is affected, the ESS will send a notice of Medicaid termination to the waiver participant. The notice will state the *Medicaid effective closure date.* In the spirit of partnership, it is suggested that ESS communicate the *Medicaid effective closure date* to care managers without delay.

- Care managers must issue a separate ten-day notice to waiver participants informing them of the termination of waiver services as of the *Medicaid effective closure date*. Unlike Medicaid card services, Waiver services are not covered under the "Forward" card. As a result, care managers must notify waiver service providers when waiver funding will end.

- It is important for care managers to be aware of the *Medicaid effective closure date* to properly terminate waiver services. When care managers make a report of lump sum payments to ESS, care managers should flag the case and should check back with ESS about the *Medicaid effective closure date.* Good communication among ESS, care manager and waiver participant will ensure that the case is processed timely and correctly.

VI. CARES Adverse Action Logic and Medicaid Effective Closure Date

Termination of Medicaid eligibility is predicated on *CARES adverse action logic and Medicaid effective closure date,* which operate as follows:

[1] Exception: for Group A waiver types processed entirely by care managers without ESS involvement (SSI, SSI-E, 1619a or b, and Katie Beckett), care managers will determine effective waiver closure dates and period of ineligibility due to lump sums to coincide with SSI and/or Katie Beckett termination notices. BALTCR is also available for consultation.

- Reports made to ESS and entered in CARES at least 13 days prior to the end of the month are said to have occurred ***before*** *adverse action date* and trigger a *Medicaid effective closure date* for the first day of the following month. For example, a report made to ESS on March 15 will trigger an effective closure date of April 1. This means that the waiver participant will continue to be financially eligible for Medicaid and waiver services until April 1.

- Reports made to ESS and entered in CARES later than 13 days prior to the end of the month are said to have occurred *after adverse action date* and trigger a *Medicaid effective closure date* for the first of the month after the following month. For example, a report made to ESS on March 22 will trigger an effective closure date of May 1. This means that the waiver participant will continue to be financially eligible for Medicaid and waiver services until May 1.

  Note: CARES adverse action date may be affected by holidays and other issues. A table in CARES lists the adverse action dates for the year.

VII. Excess Assets Spent Before the *Medicaid Effective Closure Date*

- When excess assets derived from lump sum payments are spent *before the Medicaid effective closure date*, the ESS should be notified right away. If the waiver participant no longer has excess assets as of the effective closure date, Medicaid and waiver financial eligibility should continue without interruption. For example, if the CARES notice states that the Medicaid effective closure date is May 1, and excess assets are spent before May 1, Medicaid and waiver financial eligibility should not be terminated on May 1.

EXAMPLE # 1

LUMP SUM RECEIPT REPORTED TIMELY AND BEFORE *"ADVERSE ACTION DATE"*

On January 10, Otto Smith, a waiver participant, reports to ESS that on January 5 he inherited $10,000 from his recently deceased brother. Mr. Smith informs ESS that he does not have a burial fund and intends to spend part of this sum to set up an irrevocable burial trust for $3,000; he plans to use the rest to replace his old car and to purchase some new home furnishings.

Step 1.
ESS determines the *Medicaid effective closure date.*
Since Mr. Smith's report to ESS was made on January 10, or ***before*** *adverse action date* (i.e., thirteen days before the end of the month), the Medicaid effective closure date is set for February 1(the first of the following month). A notice to this effect is sent to Mr. Smith by the ESS.

Step 2.
The care manager contacts ESS to find out the *Medicaid effective closure date.* After the care manager finds out the *Medicaid effective closure date* from ESS, the care manager will send a separate notice to the waiver participant *at least ten days prior to the*

Medicaid effective closure date. The notice will state that waiver services will also terminate as of February 1.

Mr. Smith is advised that - in order for his eligibility to continue uninterrupted – his assets need to be at the allowable $2,000 level prior to February 1 and must notify ESS of this fact.

Step 3.
In order to retain ongoing Medicaid eligibility, Mr. Smith spends his excess assets prior to February 1 and reports this fact to the ESS right away. The ESS verifies the information; Medicaid and waiver financial eligibility continue without interruption.

VIII. Excess Assets Spent <u>After</u> the *Medicaid Effective Closure Date*

- When excess assets derived from a lump sum payment are spent *<u>after</u> the Medicaid effective closure date*, the ESS should be notified as soon as the assets are spent in order to reevaluate Medicaid and waiver financial eligibility.

- <u>If the lump sum is spent before the end of the month which specifies a Medicaid closure date, Medicaid can be **reopened** as of the first day of that same month.</u> For example, if the Medicaid effective closure date is May 1and excess assets are spent before May 31, the ESS should be notified right away. ESS will reevaluate Medicaid eligibility. Because excess assets were spent before the end of May, Medicaid and waiver financial eligibility will be reopened as of May 1.

EXAMPLE # 2

LUMP SUM RECEIPT REPORTED TIMELY AND <u>AFTER</u> *"ADVERSE ACTION DATE"*

Stella Banks is a waiver participant who receives an insurance settlement amounting to $4,000 on January 26. She calls her care manager to report the lump sum on the same day. Mrs. Banks informs the care manager that she plans to remodel her bathroom sometime in February and will use this lump sum to pay for the work. Mrs. Banks understands that as long as she is over the $2,000 asset level, her Medicaid and waiver eligibility are at risk.

Step. 1.
The care manager immediately contacts the ESS to report the lump sum and the fact that Mrs. Banks plans to spend down excess assets sometime in February. The care manager assures the ESS that he will report back to ESS as soon as the excess asset is spent.

Step 2.
ESS determines the *Medicaid effective closure date*. Because the report is made on January 26, or later than thirteen days prior to the end of the month, has occurred *after adverse action date.* CARES logic triggers *a Medicaid effective closure date* of March 1 (or the first of the month after the following month). A notice to this effect is sent to the waiver participant by ESS.

Step 3.
The care manager contacts ESS to find out the *Medicaid effective closure date.* After the care manager finds out the Medicaid effective closure date*,* the care manager will send a separate notice to the waiver participant *at least ten days prior to the Medicaid effective closure date.* The notice will inform the waiver participant that waiver services will also terminate as of March 1.

Step 4.
Mrs. Banks' contractor completes the bathroom remodeling on February 28. His bill was $4,000 and Mrs. Banks pays the remodeling bill on March 2.

Step 5.
The care manager contacts ESS right away to let ESS know that Mrs. Banks has spent the excess money as of March 2. The ESS verifies the information and re-establishes Medicaid and waiver financial eligibility as of March 1, because excess assets were spent before the last day in March.

TIP: Because excess assets were spent after the *Medicaid effective closure date*, Medicaid eligibility and waiver eligibility ended as of that date. However, because the excess asset was spent before the last day of the month of the *Medicaid effective closure date*, ESS reevaluates eligibility and reestablishes it as of the first day of the month of closure.

Note: the difference between example # 1 and example # 2 is that, while in example # 1 Medicaid continues without interruption because excess assets were spent before the *Medicaid effective closure date*, in example # 2 excess assets were still in the possession of the participant after the *Medicaid effective closure date,* therefore eligibility must be re-evaluated. Should the participant retain assets in excess of exempt assets beyond March 31 in example # 2, Medicaid eligibility would be terminated as of March 1.

IX. Untimely Reports and Recovery of Medical Assistance Payments - ESS and Care Managers Roles

Incorrect Medicaid payments for Medicaid card or waiver services may result if the applicant or participant (or a person responsible for giving information on behalf of the applicant/participant) fails to report income or assets that affect his/her Medicaid eligibility.

In cases of untimely reports, ESS first determines if the asset is still in possession of the waiver participant and if it is, ESS will follow the process described under Section VI, CARES Adverse Action Logic and Medicaid Effective Closure Date for current financial eligibility determination. The care manager obtains the Medicaid effective closure date from ESS, and proceeds with the required ten-day notice for termination of waiver services.

Next, the ESS determines retrospectively how adverse action notice requirements and *Medicaid effective closure date* would have affected past Medicaid eligibility had the report been made in a timely manner. Depending on *Medicaid effective closure date* and the participant's current eligibility status, a recovery issue may exist.

In cases of recovery, the ESS will send a notice to the participant specifying the period of Medicaid ineligibility and the amount of overpayment for Medicaid card services, if any. The ESS should communicate the period of Medicaid ineligibility to the care manager. Any waiver services provided during a period of Medicaid ineligibility due **solely** to the participant's (or his/her representative) failure to report assets may also be subject to recovery.

County care managers should follow county policies regarding recovery of these waiver overpayments. One option could be to follow the policy used for COP (100% State) overpayments, spelled out in the COP policy on hidden assets or assets more accurately evaluated after care begins (see 2004 COP Declaration of Income and Assets and Financial Eligibility), or Recovery notices should contain appeal rights information. Overpayments should take into account cost-shares and/or spenddowns already paid. Recoveries from waiver participants for overpayment of waiver services should be entered as SPC 095-02 on HSRS in order to be deducted from the participant's estate recovery liability.

To summarize:

- Waiver participants and/or their representatives should be notified of reporting responsibilities at application and review.
- Lump sum payments that affect Medicaid and waiver eligibility and remain unspent or unreported beyond the Medicaid effective closure date may cause overpayments of Medicaid and waiver services.
- Partnering between care managers, ESS and waiver participant will eliminate or reduce periods of ineligibility and potential overpayments.